

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 7th day of June, two thousand eleven,

Present: AMALYA L. KEARSE,
 ROSEMARY S. POOLER,
 GERARD E. LYNCH,
 Circuit Judges.

UNITED STATES OF AMERICA,

Appellee,

-v-

10-301

JERRY CAPECI,

Interested-Party-Appellant,

MILANA MURCIA,

Defendant.

Appearing for Appellant: Stephen Gikow, Media Freedom & Information Access Practicum,
 Yale Law School, New Haven, CT, Nathan Siegel, Levine Sullivan
 Koch & Schultz, LLP, Washington, D.C. (*on the brief*).

Appearing for Appellee: Nicholas L. McQuaid, Assistant United States Attorney for the Southern District of New York (Preet Bharara, United States Attorney for the Southern District of New York; Jesse M. Furman, Assistant United States Attorney for the Southern District of New York, *on the brief*)

Appeal from the United States District Court for the Southern District of New York (Karas, *J.*).

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the judgment of said District Court be and it hereby is **AFFIRMED**.

Jerry Capeci seeks review of the January 6, 2010 order of the United States District Court for the Southern District of New York (Karas, *J.*) ordering that the transcript of certain proceedings that took place before it continue to be sealed. Capeci sought to unseal the transcript, arguing its sealing violated the First Amendment. We assume the parties' familiarity with the underlying facts, procedural history, and specification of issues for review.

For the purposes of this appeal, we assume without deciding that there was a presumptive public right of access to the proceeding in question, and that the presumption of openness may be overcome only "by an overriding interest based on findings that closure is essential to preserve higher values and is narrowly tailored to serve that interest." *Press-Enterprise Co. v. Superior Court of California*, 478 U.S. 1, 9 (1986).

We find no error with the district court's reasons for sealing, set forth in its sealed order of January 6, 2010. The government is reminded that should the conditions for unsealing set forth in the sealed order come to pass, it is under a continuing obligation to inform the district court.

Accordingly, the judgment of the district court hereby is **AFFIRMED**.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk